

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

MATTHEW R. DESCAMPS,  
Defendant.

No. CR-05-104-FVS

ORDER DENYING MOTION TO  
RECONSIDER AND MOTION TO  
QUASH

**THIS MATTER** came before the Court based upon the defendant's motion for reconsideration and the government's motion to quash a subpoena duces tecum. The defendant is represented by Jeffrey S. Niesen; the government by Stephanie Whitaker.

**PROCEDURAL HISTORY**

The defendant moved to dismiss on the ground that the government failed to file the indictment within thirty days of the date upon which he was arrested. 18 U.S.C. § 3161(b). On August 17, 2007, the Court denied the motion without oral argument.<sup>1</sup> Believing that the Court had erred, the defendant did two things. He served a subpoena duces tecum upon Assistant United States Attorney Tom Rice and moved the Court to reconsider its ruling. In response, the government moved to quash the subpoena. Both the government's motion to quash and

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(Ct. Rec. 306.)

1 denied the defendant's motion for reconsideration came before the  
2 Court on September 4th. This order serves to memorialize the Court's  
3 oral rulings.

4 **MOTION TO RECONSIDER**

5 A. Background

6 On March 25, 2005, the defendant was arrested by Stevens County  
7 deputy sheriffs without a warrant based upon probable cause to believe  
8 that he had violated the law of the State of Washington. On March  
9 30th, Special Agent Carl Richard Jessen of the Bureau of Alcohol,  
10 Tobacco, Firearms and Explosives questioned the defendant in the  
11 Stevens County Jail. At some point thereafter, Agent Jessen asked an  
12 Assistant United States Attorney ("AUSA") to seek a federal  
13 indictment. The AUSA agreed. Once the decision was made, Agent  
14 Jessen advised John Troberg, a state prosecutor, of the government's  
15 plans. The conversation occurred on or about April 20th. Afterward,  
16 Mr. Troberg jotted a note concerning his conversation with Agent  
17 Jessen. The government does not dispute the accuracy of Mr. Troberg's  
18 note. During the conversation, Agent Jessen asked Mr. Troberg not to  
19 take "any quick pleas." On April 29th, Special Agent Jessen filed a  
20 federal complaint. The defendant was arrested the same day pursuant  
21 to a federal warrant. On May 10th, a federal indictment was filed.

24 B. Ruling

25 Section 3161(b) of Title 18 provides that an indictment "shall be  
26 filed within thirty days from the date on which" the defendant was

1 arrested. Not all arrests trigger 18 U.S.C. § 3161(b); only a  
2 "federal arrest" does. *United States v. Benitez*, 34 F.3d 1489, 1493  
3 (9th Cir.1994), *cert. denied*, 513 U.S. 1197, 115 S.Ct. 1268, 131  
4 L.Ed.2d 146 (1995). "A federal arrest requires that the defendant be  
5 detained pursuant to federal charges. . . . An individual who is not  
6 officially charged with a federal offense . . . has not been arrested  
7 for the purposes of § 3161(b)." *Id.* Federal agents were not involved  
8 in the investigation that occurred on March 25th. Nor had they filed  
9 a federal complaint. Consequently, the defendant's arrest by state  
10 law enforcement officers on that date was not a federal arrest. The  
11 first federal contact with the defendant occurred on March 30th, when  
12 he was questioned by Special Agent Jessen. This event did not trigger  
13 § 3161(b) because mere questioning does not constitute a federal  
14 arrest. *See id.* at 1493-94. After March 30th, the defendant had no  
15 contact with federal agents until April 29th, when they arrested him  
16 on a federal warrant. The indictment was filed on May 10th, less than  
17 30 days after the defendant's federal arrest. Given these essentially  
18 undisputed facts, the defendant cannot establish a violation of 18  
19 U.S.C. § 3161(b) if the Court asks "When did a federal arrest occur?"  
20 and "When was the indictment filed?" Although the defendant does not  
21 concede this point, neither does he contest it. Instead, he focuses  
22 on an exception to the federal-arrest rule. Time spent in state  
23 detention counts toward the 30-day period established by § 3161(b) if  
24 federal authorities arrange for their state counterparts to detain the  
25  
26

1 defendant solely for the purpose of bypassing the requirements of the  
2 Speedy Trial Act. *Benitez*, 34 F.3d at 1494. The defendant claims  
3 that Agent Jessen attempted to circumvent § 3161(b) by asking Mr.  
4 Troberg not to take a quick plea. It follows, according to the  
5 defendant, that the 30-day clock began to run on April 20th.

6 Agent Jessen's comments to Mr. Troberg arguably would have  
7 triggered § 3161(b) if, for example, the attorney who represented the  
8 defendant in state court was in the process of negotiating a plea  
9 agreement, but the prosecutor withdrew from negotiations because of  
10 Agent Jessen's request. But there is no indication that this  
11 occurred. Moreover, even if it had, the defendant cannot establish a  
12 violation of § 3161(b). Nothing occurred prior to April 20th that  
13 could have started the 30-day clock. The earliest that the 30-day  
14 clock could have started was April 20th. The government filed the  
15 indictment on May 10th, which is less than 30 days later. Thus, even  
16 if the clock started on April 20th, the government did not violate §  
17 3161(b).  
18

19 **MOTION TO QUASH**  
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21 The government moves to quash the defendant's subpoena arguing,  
22 among other things, that the defendant failed to comply with 28 C.F.R.  
23 § 16.23(c). (United States' Motion to Quash, at 3 (citing *United*  
24 *States ex rel. Touhy v. Ragen*, 340 U.S. 462, 71 S.Ct. 416, 95 L.Ed.  
25 417 (1951))). The government's argument raises a significant due  
26 process issue that neither party has addressed. *United States v.*

1 *Bahamonde*, 445 F.3d 1225, 1228-30 (9th Cir.2006) (similar regulation  
2 violated the reciprocal discovery rule established by *Wardius v.*  
3 *Oregon*, 412 U.S. 470, 93 S.Ct. 2208, 37 L.Ed.2d 82 (1973)). However,  
4 the Court need not resolve the due process issue because there is no  
5 indication that AUSA Rice could provide any evidence which would help  
6 establish a violation of § 3161(b).

7 **IT IS HEREBY ORDERED:**

8  
9 1. The defendant's motion for reconsideration (**Ct. Rec. 314**) is  
10 denied.

11 2. The government's motion to expedite (**Ct. Rec. 312**) is denied.

12 3. The government's motion to quash (**Ct. Rec. 311**) is denied as  
13 moot.

14 **IT IS SO ORDERED.** The District Court Executive is hereby  
15 directed to enter this order and furnish copies to counsel.

16 **DATED** this 27th day of September, 2007.

17  
18 s/ Fred Van Sickle  
19 Fred Van Sickle  
United States District Judge